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SUPREME COURT, U.S.

UNITED STATES SUPREME COURT

STATE OF NORTH CAROLINA

VS

ROSA L. OXENDINE HUNT

75-6847
From Anson

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES SUPREME COURT
TO REVIEW THE DECISION OF
THE NORTH CAROLINA SUPREME COURT

Now comes the petitioner, by and through her attorney, who petitions the United States Supreme Court for a Writ of Certiorari and says and alleges:

1. That your petitioner was tried at the June 10, 1974 Criminal Session of Anson County Superior Court upon an indictment charging Murder in the First Degree.

2. That upon arraignment the petitioner entered a plea of Not Guilty to the charges and trial was had in the Superior Court for Anson County, North Carolina on June 10, 1974, and that on June 10, 1974, the Jury returned its verdict of Guilty as charged and the Judgment of Death by Execution was entered.

3. That the petitioner filed Notice of Appeal, Affidavit of Indigency and requested the Court to set bond and appoint counsel to perfect the Appeal to the North Carolina Supreme Court.

4. That F. O'Neil Jones, an Attorney of Wadesboro, N. C., was appointed to handle and perfect the petitioner's case on appeal.

5. That pursuant to an Order of the Supreme Court of North Carolina, dated August 28, 1975, the Attorney, F. O'Neil Jones, was discharged as counsel by Judge Julius A. Rousseau, Jr. effective September 10, 1975 and Henry T. Drake, Attorney, Wadesboro, N. C., was appointed to perfect defendant's appeal.

6. That the Appeal was perfected and was heard before the North Carolina Supreme Court on February 10, 1976.

7. That by Opinion filed on March 2, 1976 the North Carolina Supreme Court found no error in the trial and a copy of this

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BEST COPY AVAILABLE

Opinion of the North Carolina Supreme Court is attached hereto and incorporated herein by reference as if recited verbatim.

8. That the petitioner raised several points on appeal to the North Carolina Supreme Court which involved violations of the constitutional rights of the defendant herein.

9. That the Supreme Court decided several points in its Opinion which were in direct violation of the Constitution of the United States and that a review of said decision would appear in the best interests of justice.

10. That several cases are now pending before the United States Supreme Court including cases from North Carolina which raise the question of whether or not the death penalty as imposed by the statute in the system of North Carolina results in cruel and unusual punishment in violation of the Constitution of the United States of America.

11. The rule in North Carolina is that the Court shall excuse the cause from the Jury panel any Juror who does not agree that the death penalty should be imposed under any circumstances. See State vs Crowder, 235 NC 42 203 S.E. 2d 33, (1954). The case just cited also permits the District Attorney to question individual jurors in regards to the belief in capital punishment. The defendant petitioner contends that this procedure is error in that it conflicts with the sixth amendment to the United States Constitution and the fourteenth amendment to the United States Constitution insofar as it permits the State to pick a Jury to decide both innocence or guilt and punishment, all at the same time; and allows the State to pick a biased Jury one which is primed to return a verdict of death. The Jury as selected under this procedure does not represent a cross-section of the community to determine the issues of guilt or innocence. Under this procedure, it is much like picking from a lynch mob, the persons to decide the guilt or innocence of the individual. The defendant petitioner contends that such is in violation of the Constitution of the United States of America as amended and in violation of Witherspoon vs Illinois 391 U.S. 510 88 S.Court. 1770 20 Lawyers Edition 2d 776, (1968).

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The defendant petition contends that in no other case before the Bar in the Trial Courts of North Carolina is the Jury questioned relating to the punishment of the individual and as such it is only in the unique case of Murder in the First Degree that the question of punishment is brought before the Jury; certainly in other cases if punishment were the issue, the defendant would be entitled to those who dilute punishment leniently as well as those who would punish severely. In a First Degree Murder Case the only question is whether or not they would punish severely. If they would, then they are a qualified Juror. If they would not, they are excluded automatically by operation of law.

12. The defendant petitioner also contends that the opinion of the Supreme Court of North Carolina violates the equal protection laws of the fourteenth amendment under the Constitution of the United States.

13. The defendant at the trial level raised the question of the sufficiency of the evidence to be subritted to the Jury by moving for Non-suit at the close of the State's testimony. That elission was overruled and again the objection was raised before the North Carolina Supreme Court. The defendant petitioner's contention was that the State failed to show that Joe Hunt who died in Mecklenburg County and the Joe Hunt who was dug up and an autopsy performed on that body in Robeson County, were one and the same persons. Defendant petitioner contends that there was no evidence that the person who died and lived in Lilesville, was the same person that was dug up. The Supreme Court of North Carolina, in overruling the objection, on page 5 of the Opinion hereto attached, stated that a photograph taken of Joe Hunt before he was buried and identified by the prosecuting witness, Jacobs, and another independent photograph taken of the body of Joe Hunt that was dug up, and identified by S.B.I. Agent was sufficient proof to submit to the Jury that the bodies were the same. Defendant petitioner contends that such evidence has not been allowed in any other case in North Carolina and that such a conclusion by the Jury without identification of the photographs probably would be su-

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conjecture and that as such, the case should have been dismissed on the merits.

14. Defendant contends that other cases in North Carolina have resulted in Non-suit, See State vs Hendricks 232 NC 447 61 S.E. 2d 349 (1950). Defendant further contends that the application of the law in this case denies to this defendant, an Indian, the equal protection of law in violation of the fourteenth amendment to the United States Constitution. It is interesting to note that in the opinions recited by the North Carolina Suprere Court no authority was given for the proposition that the photographs sufficiently established that the deceased actually died of poisoning. That the North Carolina Surreme Court in effect ruled is that no redical evidence is necessary to prove the cause of death in a poisoning case. This rule is contrary to all other rules of law presented in the State of North Carolina and violates due process of law under the provisions of the United States Constitution and is in violation of the constitutional rights guaranteed and protected by the United States Constitution for this petitioner herein, see G. S. 14-17 and the fourteenth arendment to the United States Constitution.

15. That the Court also ruled in its opinion that since the defense counsel did not object to certain evidence introduced into evidence at the trial level, that he could not raise the objection before the North Carolina Supreme Court; in effect ruling that although the evidence may have been incompetent, that the assignment of counsel autoratically waived the right to exclude such incorpetent testimony. Defendant contends that such a ruling is in violation of the due process of law of the United States Constitution and is a deprivation of the defendant petitioner's rights guaranteed under that Constitution.

WHEREFORE, the petitioner prays:

That the United States Supreme Court grant a Writ of Certiorari and review the decisions of the North Carolina Supre Court and that the Verdict and Judgment of the Superior Court for Anson County, North Carolina, be reversed and that a new trial be granted to this defendant petitioner.

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Respectfully submitted this 28th day of May, 1976.

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DEFENDANT PETITIONER

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